

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.138 of 2007**

M/s B.B. Verma & Company, Contractor & Engineer, Through B.B. Verma, Proprietor, C-15, M.P. Housing Board Colony, Balco Township (Korba), Presently Residing at Minocha Colony, Mungeli Road, Bilaspur, Chhattisgarh

---- Appellant**versus**

1. South Eastern Coalfields Limited through Chairman-cum-Managing Director, S.E.C.L. Seepat Road, Bilaspur, Chhattisgarh
2. General Manager, S.E.C.L., Bhatgaon Area, Bhatgaon, District Surguja (Ambikapur)

---- Respondents

For Appellant	:	Shri Arvind Dubey, Advocate
For Respondents/SECL	:	Shri Roshan Dubey, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Justice Sanjay Agrawal****Judgment on Board****Per Deepak Gupta, Chief Justice****22.11.2016**

1. Shri Arvind Dubey, Advocate appears and submits that the brief has been taken back from him by the Appellant and the Appellant is not interested in prosecuting the appeal any further.
2. It would be pertinent to mention that on 4.9.2013, when this matter was listed before a Division Bench, none appeared for the Appellant and the appeal was dismissed for default. Thereafter, an application for restoration was filed and the appeal was restored vide order dated 22.10.2013.
3. The matter was thereafter listed on 6.3.2014 on which date also none appeared for the Appellant. In fact, the matter was listed in the weekly list and though the matter was dismissed on 6.3.2014, the Court, in its order, has found that no one was appearing for the Appellant since 3.3.2014. At the request of Learned Counsel for the Appellant, the appeal was again restored vide order dated 2.4.2014.
4. The case then came up for hearing on 13.10.2014 when the Counsel for the Appellant made a statement that he had contacted with the

party/Appellant and the party stated that let the appeal be dismissed for want of prosecution. Therefore, he pleaded on instructions and the appeal was dismissed for want of prosecution. Thereafter, another restoration application was filed and this time the application was filed through Shri Raj Kamal Singh, Advocate and the Division Bench allowed this application also only on the ground that the matter should be disposed of on merits.

5. This appeal had been dismissed three times for default and three times restored. We have gone through the record and dispose of the appeal on merits after going through the record.
6. The undisputed facts are that the Appellant/plaintiff was given a contract to excavate a total quantity of 30,994.16 cubic meters of ordinary/hard soil and rock from two inclines of the defendants/SECL and were required to be disposed of only to an area shown to be at a distance upto 50 meters only. This excavation was to be done by mechanical means only. It is also not disputed that the plaintiff commenced the work on 18.4.1996 and completed the same on 17.7.1996. In the year 1997, the plaintiff raised an issue before the defendants/SECL for extra lead payment on account of the work of disposal of excavated material done upto a distance of 300 meters instead of 50 meters, as asked by the defendants/SECL. On non-redressal of the grievance of the issue for extra lead payment, the plaintiff filed Civil Suit No.18-A of 1997 before the District Judge, Bilaspur for appointment of an Arbitrator and reference of the dispute for arbitration before the Arbitrator. The aforesaid suit was rejected vide order dated 17.11.1999 against which the plaintiff preferred Civil Revision No.1259 of 2000 before the High Court of Madhya Pradesh. The civil revision was dismissed vide order dated 27.7.2000. Thereafter, the plaintiff filed Civil Suit No.10-B of 2001 before the District Judge, Bilaspur on 10.10.2000. This civil suit was returned to

the plaintiff vide order dated 4.10.2002 due to lack of jurisdiction for presentation before a competent Court of jurisdiction. Thereafter, the plaintiff filed Civil Suit No.1-B of 2003 before the District Judge, Surguja at Ambikapur on 11.11.2002. The Learned First Additional District Judge, Surajpur, District Surguja has dismissed the civil suit vide the impugned judgment dated 24.7.2007 on the ground of limitation and merits as well.

7. As far as limitation is concerned, we are of the view that the finding of the Learned Additional District Judge may not be strictly correct. The plaintiff had been prosecuting proceedings before various Courts on legal advice received. This action was *bona fide* and would fall within the ambit of Section 14 of the Limitation Act. Therefore, this issue is decided in favour of the plaintiff.
8. However, the plaintiff has failed to lead any cogent evidence on merits. His submission is that he was orally asked by the officials of the SECL to remove earth upto the distance of 300 meters instead of 50 meters and, therefore, he had disposed of much more work. He has not named any official who asked him to do this extra work. He has led no evidence to prove this fact. There was a written agreement between the parties. The agreement could be modified only by a written document executed by the parties and the agreement could not be modified on the basis of oral directions, which also have not been proved. We find that the Appellant/plaintiff has failed to prove his case.
9. In view of the above discussion, we find no merit in the appeal, which is accordingly dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE